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MICHAEL J. STONE

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

JAMES A. HARRIS,

Plaintiff,

v.

GULF INSURANCE COMPANY,

Defendant,

MICHAEL J. STONE,

Plaintiff/Intervenor.

Case No.: C 01-4906 (CW)

**STIPULATION AND ORDER  
DISMISSING ACTION WITH  
PREJUDICE (F.R.C.P. 41(a)(1))**

The Honorable Claudia Wilken

1 The parties to this action, Plaintiff James A. Harris and Plaintiff/Intervenor Michael  
2 J. Stone (together, “Plaintiffs”) and The Travelers Indemnity Company, successor in interest  
3 by merger to Defendant Gulf Insurance Company (“Gulf”), stipulate to the following and  
4 based thereon request that this Court enter an Order Dismissing Action with Prejudice  
5 pursuant to Federal Rules of Civil Procedure, Rule 41(a)(1).

6 Stipulation

7 1. On December 31, 2001, Plaintiff Harris filed a complaint for declaratory  
8 relief, breach of contract and breach of the covenant of good faith and fair dealing related to  
9 Gulf’s obligations to defend and indemnify Harris in connection with consolidated  
10 securities litigation that became known as *In re U.S. Aggregates, Inc. Securities Litigation*.  
11 Plaintiff filed a First Amended Complaint on March 23, 2003. Plaintiff Stone filed a  
12 complaint in intervention on April 14, 2003.

13 2. On September 28, 2005, the Court entered an Order Granting the Parties’  
14 Joint Application for Judicial Resolution of Counts I and II of Plaintiffs’ First Amended  
15 Complaint and Entering Judgment on Counts I and II of Plaintiffs’ First Amended  
16 Complaint Under Federal Rule of Civil Procedure 54(b) (the “Judgment”). The Judgment  
17 was based on the Court’s December 12, 2003 Order, Granting in Part and Denying in Part  
18 Plaintiffs’ Motion for Partial Summary Judgment and Denying Defendant’s Motion for  
19 Summary Judgment, published as *Harris v. Gulf Insurance Co.*, 297 F. Supp. 2d 1220 (N.D.  
20 Cal. 2003). Gulf filed a Notice of Appeal from the Judgment on October 28, 2005. On  
21 January 8, 2008, the Court of Appeals for the Ninth Circuit affirmed the Judgment.

22 3. Counts III and IV of the Amended Complaint remain pending before this  
23 Court. The parties have entered into a written settlement agreement that resolves these  
24 remaining claims. As reflected in the settlement agreement, in consideration for certain acts  
25 to be performed by Gulf, Plaintiffs have agreed to seek a dismissal with prejudice of all  
26 claims now pending in this action before this Court. In addition, the parties have agreed  
27 that each of the parties are to bear their own costs, attorneys’ fees and any other expenses  
28

1 incurred or expended in connection with this case and with the appeal of the Judgment.

2 IT IS SO STIPULATED.

3  
4 DATED: February 4, 2008

HELLER EHRMAN LLP

5 By /s/Stephen N. Goldberg

6 STEPHEN N. GOLDBERG

7 Attorneys for Plaintiff

8 JAMES A. HARRIS

9 DATED: February 3, 2008

JEFFER, MANGELS, BUTLER & MARMARO LLP

10 By /s/ Robert C. Gebhardt\*

11 ROBERT C. GEBHARDT

12 Attorneys for Plaintiff/Intervenor

13 MICHAEL J. STONE

14 DATED: February 13, 2008

TUCKER ELLIS & WEST

15 By /s/ Alec H. Boyd\*

16 ALEC H. BOYD

17 Attorneys for Defendant

18 GULF INSURANCE COMPANY

19 \* By express authorization.

20 ORDER

21 Based on the stipulation of the parties,

22 IT IS HEREBY ORDERED THAT:

23 1. The action is dismissed in its entirety with prejudice; and

24 2. Each of the parties shall bear its own costs, expenses and attorneys' fees  
25 associated with the prosecution and defense of this action, whether incurred before this  
26 Court or in connection with the appeal of this Court's Judgment.

27 3/3/08

28 Dated: \_\_\_\_\_



United States District Judge